

DATE: MARCH 15, 1996

CASE NO: 93-INA-463

In the Matter of

DNT INTERNATIONAL, INC.
Employer

on behalf of

ADAM LI-MIN CHI
Alien

Before: Jarvis, Vittone and Wood
Administrative Law Judges

DONALD B. JARVIS
Administrative Law Judge

DECISION AND ORDER

The above action arises upon the Employer's request for review pursuant to 20 C.F.R. §656.26 (1991) of the United States Department of Labor Certifying Officer's ("C.O.") denial of a labor certification application. This application was submitted by the Employer on behalf of the above-named Alien pursuant to §212(a)(14) of the Immigration and Nationality Act of 1990, 8 U.S.C. §1182(a)(14)(1990)("Act"). The certification of aliens for permanent employment is governed by §212(a)(5)(A) of the Act, 8 U.S.C. §1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations (C.F.R.) Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under §212(a)(14) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of the United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the

responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

We base our decision on the record upon which the C.O. denied certification and the Employer's request for review, as contained in an Appeal File ("AF"), and any written argument of the parties. 20 C.F.R. §656.27(c).

STATEMENT OF THE CASE

Employer DNT International, Inc. filed an application for labor certification on behalf of alien Adam Li-Min Chi as a Transportation Specialist on October 28, 1991 (AF 1-84). Duties of the position were to arrange sea and air transportation by bulk loading and container consolidation, executing and monitoring necessary operational aspects and accounting for FOB/CIF cargoes, as well as coordinating all shipping arrangements with shippers and consignees (AF 110). As amended, requirements for the position were a Bachelor's degree in Transportation Management and 3 months experience in the job offered, as well as knowledge of freight cargo regulations in Taiwan, Hong Kong and China, and knowledge of the Mandarin Chinese language. Id.

In her Final Determination ("FD"), dated April 14, 1993, the C.O. denied certification (AF 186-189). The C.O. found the requirement which limited the Bachelor's degree to only the major of Transportation Management to be excessively specific and therefore unduly restrictive. Id.

Employer filed a timely request for administrative review on April 26, 1993. (AF 200-190). Employer also submitted a brief to this Board.

DISCUSSION

The issue for determination by this panel is whether the Employer's requirement for a Bachelor's degree in the field of Transportation Management is unduly restrictive. The C.O. argues that the position offered is really an entry level one, should more appropriately be labeled import/export clerk, and does not require an educational requirement which is so restrictive (AF 195-198). The Employer responds by noting that the Guide for Occupational Exploration states that the job of Traffic Manager

requires education in the specific fields of transportation technology, traffic management and data processing, albeit only 2 years of college in these fields (Employer's Brief at p.4).

The job was classified as Import-Export Agent with the Occupational Code of 184.117-022. (AF 194; DOT 126). The classification has a SVP of 7, which requires over 2 years up to and including 4 years of education or experience. (DOT 1009). While a Bachelor's Degree requirement is encompassed by the SVP, the CO challenged the requirement that the degree be in Transportation Management as unduly restrictive. (AF 174). Employer was required to justify this requirement on the ground of business necessity or amend the application to include degrees in Business, Finance and Economics with some amount of experience. Id. The CO also required Employer to rebut that applicants Tong and Hu were rejected for lawful job-related reasons. (AF 173).

The Employer's rebuttal stated that a Bachelor's Degree in Transportation Management was "the requirement of utmost importance" (AF 184). The FD found that the Employer had failed to document that the requirement for the specific degree in transportation management is normal or customary in the industry or with the Employer. (AF 197). The FD also found that the Employer failed to document that any other person in this position had that degree. Id.

Business necessity for a restrictive degree requirement is not established where an employer fails to provide supporting documentation. John Hancock Financial Services, 91-INA-131 (June 4, 1992). It failed to do so in this case. Applicants, Tong and Hu, who appeared to be qualified for the position, were rejected without interviews because they did not possess the restrictive degree. (AF 164). Employer had a duty to further investigate their credentials. Wilton Stationers, Inc., 94-INA-232. The CO properly found that applicants Tong and Hu were rejected for other than lawful job-related reasons. Section 656.21(b)(7); Jana Corporation, 94-INA-5 (Dec. 21, 1994); Drake College, 94-INA-125 (March 31, 1995).

The Final Determination of the Certifying Officer denying labor certification is affirmed.

For the Panel:

DONALD B. JARVIS
Administrative Law Judge

DBJ/bg